THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETTION NO.23068 OF 2006

BETWEEN:

M.Srinivasulu son of late Srid Venkateswarlu and others

…Petitioners

vs.

Regional Joint Commissioner, Guntur Zone, Endowments and another

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETTION NO.23068 OF 2006

ORAL ORDER

The writ petitioners claim to be cultivating tenants of Sri Vejendulavari Tank, Ponduru Village, Tangutur Mandal, Prakasam District since long. Initially the petitioners were declared as a landless poor persons within the meaning of the said expression under Sec.82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act,1987 (for short "the Act") by the Assistant Commissioner, Endowments concerned. The Regional Joint Commissioner of Endowments thereupon took up *suo motu* a revision of the Assistant Commissioner's order, exercising power, authority and jurisdiction under Sec.92 of the Act in view of the delegation of the power of the Commissioner to him under Sec.9 of the Act and by a proceedings dated.26-08-2006 cancelled the orders of the Assistant Commissioner and set aside the Assistant Commissioner's declaration of the petitioners as land less poor persons. Consequently as a petitioners' term of lease had expired, the petitioners were liable to eviction in view of the earlier Form No.1 notice issued to them. Assailing the orders of the Regional Joint Commissioner dated.26-08-2006, the petitioners filed W.P.No.18720 of 2006 on 11-09-2006. While directing notice before admission this Court directed maintenance of *status quo* to examine the petitioners' contention as to the lack of jurisdiction of the Regional Joint Commissioner exercising powers purportedly under Sec.92 of the Act. By a subsequent order dated.23-10-2006 however, this Court dissolved the earlier interim order dated.11-09-2006 recording *prima facie* that this Court finds no

jurisdictional or substantive infirmity in the order of the Regional Joint Commissioner dated.26-08-2006, in view of the provision of Sec.92 read with Sec.9 of the Act. This Court also enabled the respondents in that writ petition to proceed with the auction as earlier notified and the petitioners were permitted to participate in the auction if they so desire and if their bid were competitive, directed that their bid may be considered in accordance with law and within the spectrum of lawful discretion inhering in the Tank authorities.

Thereafter on 24-10-2006 pursuant to the modified interim order of this Court dated.23-10-2006 the 3rd respondent issued a handbill notifying public auction of the lands of the Vejendulavari Tank for grant of leasehold rights and scheduled the auction on 31-10-2006. On 31-10-2006 the auction was duly held. The petitioners however complain that they were prevented from participating with the auction. Another allegation in this writ petition challenging the auction held on 31-10-2006 is that there is a transgression of the mandatory provision of the Rule.11 of the A.P. Charitable and Hindu Religious Institutions & Endowments Lease of Agricultural Lands Rules,2003 (for short " the 2003 Rules") as no 10 days notice prior to the date of auction was issued publishing the fact of the schedule of the auction, in a local language. Responding to this assertion in the writ petition the learned counsel for the 3rd respondent on instructions states that the 3rd respondent issued a handbill on 24-10-2006 notifying the auction on 31-10-2006 and that the auction was also notified by a *tom tom* in the village on five(5) occasions including on 30-10-2006.

On the basis of the assertions made on behalf of the 3rd respondent on instructions from the 3rd respondent it is apparent that the handbill was issued on 24-10-2006 in respect of an auction scheduled and held on 31-10-2006. Rule.11 of the 2003 Rules mandates that " *A copy of the auction notice shall be published…at*

lease ten days prior to the date fixed for auction". On established facts, since the handbill is dated.24-10-2006 there is no notice 10 days prior to the date fixed for an auction (31-10-2006) since the rule employs the expression at least ten days prior, the direction of the rule must be taken to be mandatory and a strict compliance thereof is unavoidable. At any rate there appears no justification for transgression of the time fixed by the Rule. That there has been a clear transgression of the Rule is beyond disputation.

For the aforesaid reasons the auction held on 31-10-2006 for grant of leasehold rights of Sri Vejendulavari Tank, Ponduru Village, Tangutur Mandal, Prakasam District is declared illegal, inoperative and unenforceable. The respondents are directed to expeditiously re-conduct the auction in accordance with the Rules. The petitioners, needless to state shall also be eligible to participate in the auction if they so desire.

The writ petition is disposed of as above at the stage of admission after hearing the learned counsel for the petitioners, the learned Government Pleader for Endowments and the learned counsel for the 3rd respondent. No order as to costs.

GODA RAGHURAM,J

6TH NOVEMBER 2006
***TSNR**